U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 22 2005

EAC 02 280 53169

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a postdoctoral fellow at Temple University. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

> burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Several witness letters accompany the petitioner's initial filing. Professor [redacted] who supervised the petitioner's work at Temple University, states:

> [The petitioner] is one of only a handful of chemist[s] with an expertise in the increasingly technical field of material science. . . . [The petitioner's] extensive expertise lies in the multi-billion dollar field of semiconductors, optoelectronics, and surface science. . . . His work in this field is of the highest caliber, and demonstrates his possession of an extraordinary degree of skill in the field of material science.
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> [The petitioner] is indeed a pioneer in his field. The breakthroughs, innovations and discoveries he has made will continue into the future. . . .
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> [The petitioner] is intimately involved with a project supported by the US Department of Energy to prevent acid mine drainage (AMD). AMD results . . . [when] metal sulfides, uncovered during mining, are exposed to the atmosphere where they decompose to form sulfuric acid which destroys above and subsurface waterways and the life within. . . .
>
> [The petitioner] is carrying out research to understand the AMD process resulting from the oxidation of the most ubiquitous sulfide, pyrite. His research is continuing to unravel the surface chemistry that precedes the AMD process. The goal is to coat the metal sulfide with materials that will prevent the elementary reactions that makeup AMD. He has been a pioneer in the synthesis of model pyrite materials that will allow us to understand and ultimately help solve this major environmental problem. . . .
>
> Currently, [the petitioner] is working on a project, funded by [redacted] and the US National Science Foundation, dealing with the formation mechanism of dichlorodimethylsilane – a necessary ingredient for the billion dollar silicone industry. The mechanism of this process is not clear [redacted] although an understanding [of] the chemistry would allow them to optimize their chemistry. The importance of this research is huge, as there is widespread use of silicone in various industries.

All but one of the other initial witnesses have worked with the petitioner as well, mostly at Rutgers University where the petitioner earned his doctorate. (The remaining witness met the petitioner during a 1998 visit to Rutgers.) Professor [redacted] who supervised the petitioner's doctoral studies, describes the petitioner's work at Rutgers:

> [The petitioner's] work with me . . . was primarily on FTIR studies of surface oxidation. . . .
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> [The petitioner] played a key role in the design, construction and operation of a new ultrahigh vacuum FTIR system. . . . The instruments that he has designed are among the most versatile ones worldwide for vibrational spectroscopy of practical materials. . . .
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> [The petitioner] has been quite productive, with a solid and growing record of publication. His papers are becoming highly cited by scientists throughout the world.

The record contains copies of two of the petitioner's published articles. With regard to Prof. [redacted] claim that the petitioner's "papers are becoming highly cited by scientists throughout the world," the initial submission contains only one article citing the petitioner's work. One of the co-authors of the citing article is Prof. [redacted] who also co-wrote the work cited. Thus, the only citation of the petitioner's work in the initial submission is a self-citation by a co-author. While self-citation is common and accepted practice, it can hardly be construed as evidence that the petitioner's articles are "highly cited . . . throughout the world."

Much of the petitioner's work as a Rutgers student took place at [redacted] under the direction of Dr. [redacted] who states:

> [The petitioner] is an outstanding scientist who has displayed both academic brilliance and great ingenuity. . . . In a short time, [the petitioner] developed novel configurations to probe extremely low concentrations at surfaces, modified ultra-high vacuum chambers to be able to probe oxide growth in-situ, and obtained new results that are already having a great impact on the [redacted] community at [redacted] and [redacted] Most importantly, [the petitioner] learned new skills extremely quickly and has developed into a world class, independent researcher who excels at his present position at Temple University.

The director denied the petition, stating that the materials submitted with the petition do not show that the petitioner "has compiled a record of substantial achievement" that has yielded tangible, objective evidence of impact on the field (such as heavy third-party citation of the petitioner's published work). The director stated that involvement in an important, government-funded project is not, by itself, *prima facie* evidence of eligibility for the waiver.

On appeal, the petitioner states that his three papers published prior to the filing date "have been cited 20 times in 15 journal publications. . . . Twelve of these 15 citing papers were from independent research groups. In one of the citing papers . . . Dr. [redacted] Evans referred to my research as 'an important study of oxidation on clean Si(100) at low temperature'" (the petitioner's emphasis).

Acknowledging that his initial submission focused heavily on letters from supervisors and collaborators, the petitioner submits new letters from independent witnesses. Most of the letters discuss the work that the petitioner had undertaken at Rutgers. Dr [redacted] assistant professor at Stanford University, states:

> I have not worked with [the petitioner] directly, but because I work in a similar field I became familiar with [the petitioner's] research and because he has published his research in several prestigious journals. . . . His research on the mechanism and kinetics of the oxidation of hydrogen covered silicon surface is of great importance and has significantly impacted the semiconductor field and how the this [sic] industry is working to solve their most difficult technical challenges. . . .
>
> Due to the ever-shrinking size of the individual transistors on computer chips, the thickness of the gate oxide is approaching its physical limits. [The petitioner's] research elucidated the kinetics of the initial oxidation process on hydrogen covered silicon surface, which is key to understanding the formation of the ultra-thin gate oxide films. The integrity and electronic properties of this ultra-thin gate oxide are directly affected by the initial oxidation process. Without the fundamental understanding of this process as provided by [the petitioner's] research, the next generation of silicon based semiconductor technology will be extremely challenging. Silicon oxidation is one of the most important scientific and technical challenges in the semiconductor industry. [The petitioner] studied this issue using his unique expertise in surface science and has had significant impact in this key field (silicon oxidation), and also on the broader areas of semiconductor research.
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> I would consider [the petitioner] as one of the top scientists in the field of surface science and semiconductor research.

Professor [redacted] chair of the Department of Chemistry and Chemical Biology at Harvard University, states that one of the petitioner's published articles "provided the first fundamental understanding" of "the kinetics of the oxidation of hydrogen covered silicon surface." Professor [redacted] of the Federal University of [redacted] Grande do Sul and the University of Caxias do Sul, both in Brazil, states:

> Although I have not worked directly with [the petitioner], I started to pay attention to his work in 2001 after I saw him speak about his research. He shortly thereafter published some very interesting and important papers, which I continue to discuss with my colleagues and students. One of his research projects that particularly interested me was focused on the kinetics of the oxidation of hydrogen covered silicon surfaces. This is an intrinsically imperative problem in semiconductor research, and one that I have been involved with for some years. [The petitioner's] results have given us important new insight in this critical problem and his papers have attracted significant interest from the international community in this technologically important field. . . .
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> [The petitioner's] study was the "cornerstone" in understanding this key problem in gate oxide, which further impact[s] greatly in the semiconductor research area. I think he has proven his pioneering role in the international semiconductor research community.

The final letter concerns the petitioner's subsequent work at Temple University. Joseph Wang, a specialist at the California Energy Commission, states:

> I don't know [the petitioner] personally but I am aware of his scientific research in the field of acid mine drainage. . . .

> [The petitioner] is currently conducting research in the oxidation of ubiquitous sulfide pyrite. The evaluation of the binding of Two-Tail lipid to the pyrite surface shows promising results. He has been unique in the synthesis of model pyrite materials that will help us understand and ultimately solve this environmental problem.

Portions of Mr. [redacted] letter resemble, almost word-for-word, parts of Prof. Strongin's earlier letter. In general, this letter is less persuasive than the other letters submitted on appeal. On appeal, the petitioner provides a mailing address that is several hundred miles away from where Temple University is located, and therefore it appears that the petitioner is no longer working at Temple. The record does not indicate where the petitioner began working after leaving Temple.

The petitioner's greatest influence (thus far) appears to be in the area of semiconductors, rather than his subsequent work with AMD. That being said, both of these seemingly disparate areas of endeavor relate to materials science, with particular emphasis on surfaces. Also, the petitioner's work with semiconductors was earlier and therefore has had more time for its influence to become apparent.

The petitioner's initial submission was rather weakly presented (as the petitioner acknowledges on appeal). The director construed this as evidence of ineligibility, rather than insufficient evidence of eligibility, and denied the petition without first issuing a request for evidence. We find that the director erred in this regard; the petitioner's initial filing contained nothing that would, on its face, plainly disqualify the petitioner. When the record does not contain evidence of ineligibility, but the evidence is not sufficient to warrant approval, 8 C.F.R. § 103.2(b)(8) requires the issuance of a request for evidence in order to allow the petitioner the opportunity to supplement the record. Because the director never afforded the petitioner that opportunity prior to the denial, the appeal represents the petitioner's first chance to submit new materials that more clearly set forth the merits of his claim. These materials include a rapidly increasing citation rate of the petitioner's published work, and letters from independent witnesses attesting to the importance of his work.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, upon careful review, the materials in the record establish that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.